

**PHS 380.503 Requirements.**

(a) *Indian ownership.* The degree of ownership that is called for by PHS 380.502–2 shall be 100 percent during the period covered by a Buy Indian contract unless a deviation from that 100 percent requirement is approved on an individual basis by the cognizant Area or Program Office Director of the Indian Health Service. Such a deviation, which may be to not less than 51 percent, must be accompanied by an appropriate justification for the deviation.

(b) *Joint ventures.* An Indian firm may enter into a joint venture with other entities for specific projects as long as the Indian firm is the managing partner. However, the joint venture must be approved by the contracting officer prior to the award of a contract under the Buy Indian Act.

(c) *Bonds.* In the case of contracts for the construction, alteration, or repair of public buildings or public works, performance and payment bonds are required by the Miller Act (40 U.S.C. 270a) and Part 28 of the Federal Acquisition Regulation (48 CFR Ch. 1). In the case of contracts with Indian tribes or public nonprofit organizations serving as governmental instrumentalities of an Indian tribe, bonds are not required. However, bonds are required when dealing with private business entities which are owned by an Indian tribe or members of an Indian tribe. Bonds may be required of private business entities which are joint ventures with, or subcontractors of, an Indian tribe or a public nonprofit organization serving as a governmental instrumentality of an Indian tribe. A bid guarantee or bid bond is required only when a performance or payment bond is required.

(d) *Indian preference in employment, training and subcontracting.* Contracts awarded under the Buy Indian Act are subject to the requirements of section 7(b) of the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638), which requires that preference be given to Indians in employment, training, and subcontracting. Subpart 370.2 and the contract clauses in 352.270–2 and 352.270–3 represent the Department's implementation of section 7(b). The Indian Preference clause set forth in 352.270–2 shall be included in

all Buy Indian solicitations and resultant contracts. The Indian Preference Program clause set forth in 352.270–3 shall be used as specified in 370.202(b). All requirements set forth in Subpart 370.2 which are applicable to the instant Buy Indian acquisition shall be followed by the contracting officer, e.g., sections 370.204 and 370.205.

(e) *Subcontracting.* Not more than 50 percent of the work to be performed under a prime contract awarded pursuant to the Buy Indian Act shall be subcontracted to other than Indian firms. For this purpose, work to be performed does not include the provision of materials, supplies, or equipment.

(f) *Wage rates.* A determination of the minimum wage rates by the Secretary of Labor as required by the Davis-Bacon Act (40 U.S.C. 276a–5) shall be included in all contracts awarded under the Buy Indian Act for over \$2,000 for construction, alteration, or repair, including painting and decorating, of public buildings and public works, except contracts with Indian tribes or public nonprofit organizations serving as governmental instrumentalities of an Indian tribe. The wage rate determination is to be included in contracts with private business entities even if they are owned by an Indian tribe or members of an Indian tribe and in connection with joint ventures with, or subcontractors of, an Indian tribe or a public nonprofit organization serving as a governmental instrumentality of an Indian tribe.

**PHS 380.504 Competition.**

(a) Contracts to be awarded under the Buy Indian Act shall be subject to competition among Indians or Indian concerns to the maximum extent that competition is determined by the contracting officer to be practicable, pursuant to FAR 14.101 and FAR 15.105. When competition is determined not to be practicable, a Justification for Noncompetitive Acquisition shall be prepared in accordance with 315.7105 and subsequently retained in the contract file.

(b) Notwithstanding the provisions of Subpart 315.71, a request for approval of noncompetitive acquisitions to be negotiated under the Buy Indian Act may, if \$25,000 or less, be approved by

the chief of the contracting office, or, if over \$25,000, by the cognizant Area or Program Office Director. Approval shall be in the form of a Justification for Noncompetitive Acquisition.

(c) Solicitations must be synopsized and publicized in the Commerce Business Daily (see FAR 5.2 and Subpart 305.2) and copies of the synopses sent to the tribal office of the Indian tribal government directly concerned with the proposed acquisition as well as to Indian concerns and others having a legitimate interest. The synopsis should state that the acquisition is restricted to Indian firms under the Buy Indian Act.

**PHS 380.505 Responsibility determinations.**

(a) A contract may be awarded under the Buy Indian Act only if it is first determined that the project or function to be contracted for is likely to be satisfactorily performed under such a contract and that the project or function is likely to be properly completed or maintained under that contract.

(b) The determination called for by paragraph (a), to be made prior to the award of a contract, will be made in writing by the contracting officer reflecting an analysis of the standards set forth in FAR 9.104-1, 309.104-1 of this Chapter and PHS 380.502-2.

